

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on January 10, 2003 at
4 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. John Esp (R)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Bob DePratu (R)

Members Absent: Sen. Dan Harrington (D)

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 72, 12/19/2002
Executive Action:

HEARING ON SB 72

Sponsor: SEN. JOHN COBB, SD 25, Augusta

Proponents: Lonnie Olson, Department of Public Health and Human Services (DPHHS)

Opponents: Andrea Shipley, Working for Equality and Economic Liberation (WEEL)
Michelle Lee, Livingston
Karlyn Jarosch, WEEL
Mary Caferro, WEEL
Betty Beverly, Montana Senior Citizens Association (MSCA)
Rebecca Moog, WEEL
Judy Smith, Montana Fair Share Network
Kate Kahan, WEEL
Linda Gryczan, Montana Women's Lobby
Beth Satare, MT Coalition Against Domestic Violence & Sexual Assault

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, Augusta introduced SB 72 saying the bill was reluctantly requested by the Department of Public Health and Human Services. It allows the department to charge a handling fee for child support payments collected to an obligee, who is not a recipient of public assistance, \$7 or 10%, whichever is less. The whole bill is on page two, line two. Line one would change from "may not charge," to "may charge." Years ago a similar bill like this was passed, but so many complaints were made; the legislature came back and killed it. The bill came back during the special session and nothing was done about it and now it is back again. The governor's budget, before the big cut that happened Monday, is supposed to have another 29 million dollars cut from it. The budget for child support is missing money to run their budget right now for the rest of the fiscal year. The next two years they do not have enough money from the federal government and their own money to run their budget. In the governor's budget, there is no spending in the general fund for them. The only way to run their budget is to get fees or the legislature is going to have to find some general funds to put in there. One problem child support got into was the federal government reimbursing them, giving them incentive money. They were doing fine until the rules changed when the bigger states

got more, and the rule was made retroactive. CSED was already into their budget then, and that hurt their budget. Right now, they are in trouble, and they cannot run their budget now or for next year. They are asking for this fee increase. Another problem with this bill is if the \$7 or 10% is paid, they have to give 66% back to the federal government. The federal government paid 66% and state only had to pay 33%. For every dollar collected, not all is kept, but reimbursed to the federal government. If this bill dies and they do not find monies in the general fund, the CSED will need to find cuts somewhere else, within their own budget. CSED is helping more than 40,000 families right now each year. From the time this program came into being, they have helped reduce the 12,500 families on welfare down to less than 5,000 last year. This recession has bumped it back up to 6,000. When CSED does not get enough money, and the federal government says they are not doing it correctly, the federal government pulls their money. When child support money is pulled, then the welfare money and TANF monies are pulled; part of that money goes to pay for eligibility technicians who see if the people qualify for any of the programs. It is like a deck of cards. When child support is pulled from that deck, the whole human service budget starts to collapse. **SEN. COBB** summarized by saying that all this bill is trying to do is raise some money by charging a fee. He acknowledged that no one wants to do this, but money needs to be raised to continue providing the services.

Proponents' Testimony: **Lonnie Olson, Administrator of the Child Support Enforcement Division, DPHHS**, handed out a brief description of the proposal **EXHIBIT (phs05a01)**. He stated that **SEN. COBB** gave detailed information and wanted to add that 51.4 million dollars were collected last year and distributed to 41,400 families. He said that there are huge case loads and not enough man power. Without this or the alternative funding, there would be a decrease in services, which in turn would affect the people.

Opponents' Testimony: **Jodi Medlar, Board Member of WEEL**, and **Andrea Shipley, WEEL** came up together to share testimony. Ms. Shipley read a letter by a 14-year-old asking the committee to vote no on SB 72 **EXHIBIT (phs05a02)**. Ms. Medlar placed \$7 worth of food out to display what it could buy for a child.

Michelle Lee, Livingston, said this issue was first talked about in 1994. In 1997, it was passed. She participated in getting the fees thwarted in the administrative rule making process in 1998. She brought copies of various newspaper clippings from 1998 to 1999, from across Montana **EXHIBIT (phs05a03)**. **Ms. Lee** said every major newspaper in Montana came out and said the legislature

should not make up budget shortfalls on the backs of children. In 1999, Ms. Lee filed a human rights commission complaint because when fees are being taken from child support checks, it affects two protective classes, women and children. In March 31, 1999, Human Rights Commission did find it affecting those two classes. However, they could not rule because it was an administrative agency. There was a separation of powers issue. At that point, Ms. Lee took it to federal court. The federal judge in Missoula did not rule on that portion of the law suit because the legislature did remove the fees in 1999. She stated she had already contacted the attorneys in case SB 72 does pass, and will follow up on that portion of the law suit. Ms. Lee shared an email from Andrew Malcolm to Lori Meccinger stating that Governor Mark Racicot had asked him to look into the controversy regarding the child support enforcement fee. Mr. Malcolm stated that this was a losing controversy. Ms. Lee shared the 2002 Litigation Survey **EXHIBIT (phs05a04)**. She said it included four fees cases settled in 2001. The most substantial one that applies to this is Harp v. Metcalf (Tennessee). She said the attorney fees were \$750,000, exclusive of the reimbursements that they had to make to the families. The ruling can be read in exhibit (4).

{Tape: 1; Side: A}

The state will distribute the amount collected to families who have never received assistance. There is no allowance for a fee to be deducted. She also noted that one premise that occurred in the original lawsuit was the cost analysis; how the 10% or \$7 was promulgated. There were some flaws found in the original formula because the agency acknowledged a budget shortfall and focused all attention on how to make up for that shortfall. She noted that the federal law is clear in noting that it must be cost based. Currently collection efforts cost \$3.91 per case, and that is according to the cost analysis done by the federal government. **Ms. Lee** submitted a chart of this cost analysis in **EXHIBIT (phs05a05)**. The chart lists the cost effectiveness of the state. Focusing on the fiscal note, she noted the amounts issued. She explained that the super ruling says that an administrative agency cannot alter an order promulgated by a district court. She stressed that, in her opinion, when the fee is taken out, the order of the court is being altered. If it were based on the 387,462 warrants issued, and 80% would receive the maximum \$7 fee, the total appears a bit high. She came to this conclusion because the total distribution of collections for those who were not on assistance in fiscal 2001 was \$17,684,475. To base it purely on this, warrants would not work, keeping in mind that the formula itself is flawed. If a budget has a shortfall, the agency cannot just backpedal to make up for it.

Ms. Lee stated that it must be cost based. The total amount of support collected and distributed during fiscal year 2001 to Montana families was \$13.2 million. She said there is no way these numbers work. They are not accurate and clearly need some refinement. The formula needs to be looked at, she insists. The state budget may currently be tight, but charging more fees is not the means that should be taken to make up funds for child support. There are other alternative measures to make up the shortfall in money and she said she would be happy to discuss these options with anyone.

Karlyn Jarosch, WEEL, rose in opposition of SB 72 and presented a picture of her daughter, Sierra, to put a face on whom this bill would directly effect. She explained for the last three years she has been trying to get off welfare. She is now off welfare and is working full time at a job that pays \$8 an hour. She explained that if it were not for her \$300 a month child support payment, she could not pay her basic bills. For the last few months, she was only receiving \$276 a month of the \$300 owed her. As of December, she was owed \$376 in arrears. Upon advocating for herself and going to child support enforcement, and asking them to notice her arrears, she received \$415 this month. She expressed that the money meant a great deal to her and her daughter. It meant that her daughter would have the opportunity to attend an after-school ski program. **Ms. Jarosch** believes that her daughter's child support should go to things that make her life more normal. As a single mother, she explained that it is very difficult to say no to her daughter when all of her daughter's friends come from two-parent households with larger incomes. She ended by saying that her daughter deserves a good quality of life and although \$7 does not sound like much money, it affects people who use that money to pay even the most basic bills.

Mary Caferro, WEEL, submitted written testimony
EXHIBIT (phs05a06) .

Betty Beverly, Montana Senior Citizens Association (MSCA), explained that if her daughter, a single working mother, did not have support, she would not be a single working mother, she would be on welfare. **Ms. Beverly's** daughter often works nights and cannot find night child care that would fit her budget. If her daughter can get the father of her children to pay child support, that money can pay for diapers for two weeks. She asked the committee to think about the single moms that are out there and realize that they have a tough job. She also said a tax cannot be put on the backs of children. **Ms. Beverly** thought the child support tax had been resolved and noted that many constituents

would be upset if they knew there was a chance that this bill may pass.

Rebecca Moog, WEEL, explained that many think \$14 a month is no big deal, but for many, \$14 can make a profound difference. Also, she declared SB 72 to be a tax on children, and because children cannot vote, it would be a tax without representation.

Judy Smith, Montana Fair Share Network, submitted written testimony, **EXHIBIT**(phs05a07).

Kate Kahan, WEEL, noted that many states look to other states to replicate their policies and carrying SB 72 would set a bad precedent. She also noted there are other ways of balancing the budget. **Mrs. Kahn** also spoke from a national perspective. She said as the national government gathers these fees, they are putting them into competitive grant programs that are not necessarily going back into child support programs on the state level. Also, the national trend is moving away from punitive measures and more toward recognizing the importance of child support and stabilizing family income.

Linda Gryczan, Montana Women's Lobby, requests that the bill be postponed so that committees and those involved can find another source of revenue. She advised that now is not the time to be in an advisory position and budget numbers have been changing very quickly recently. She ended by asserting the child support budget could be balanced by someone other than our children.

Beth Satare, MT Coalition Against Domestic Violence & Sexual Assault, added her opposition to SB 72 and asked that the child support budget be compensated in other ways.

Questions from Committee Members and Responses:

SEN. BOHLINGER calculated that the \$14 a month would add up to a 11.66% increase. **Mary Caferro** agreed that his calculations were correct. **SEN. BOHLINGER** added that looking at the increase as a percent, the \$14 a month fee far exceeds anything that the state usually imposes, other than a 15% tax on gambling. It is far greater than the 4% hotel tax, for example. Given these taxes for comparison, **SEN BOHLINGER** finds the increase to be more sharp than on most state taxes. **Mrs. Caferro** agreed.

SEN. ESP clarified that the bill calls for a \$7 or 10% increase, whichever is less. With this adjustment, **SEN. BOHLINGER'S** calculations were a bit high.

SEN. BOHLINGER asked **Judy Smith** if she could lend support to some tax reform proposals that he will be bringing forward. **SEN.**

BOHLINGER said his bill would provide \$150 million of new revenue to help fill the budget shortfall. It will drop from taxation, anyone whose adjusted gross income is \$13,610 or less. They are about 170,000 Montanans, 20% of our population, that should not be paying state income taxes. It will provide 30% reductions in property taxes by moving the 95 mills that support K-12 education, from property owners and make it a part of the general fund. It will move the six mills for higher education from property owners and make it a function of the general fund. It will cost about 200 million dollars to do this. The proposal will also provide a 50% reduction in state income taxes to other wage earners. These benefits are going to be supported by a 4% general sales tax on goods and services. The tax would exclude food, pharmaceuticals and utilities. **SEN. BOHLINGER** wanted to know if her association would support such a proposal. **Ms. Smith** responded that the association had looked over the proposal and had talked about some aspects they liked. Her personal opinion was that they could not rule out things until they can evaluate the impact. She thought they might end with a package of some kind.

SEN. ESP wanted to know if CSED got any complaints. **Mr. Olson** said all the cases that they get involved in being voluntary except for those who receive public assistance as TANF. For those cases, they have received some complaints.

{Tape: 1; Side: B}

SEN. ESP asked **Mary Caferro** if WEEL had given it much thought which one would be better, the tax or taking the money away from CSED. **Ms. Caferro** admitted that they had thought about that and her organization had discussed which would be more harmful, taking money from the program, which is ineffective, or from the children. The Advisory Council's recommendation said to look at other sources, one of them may have been the tobacco tax, but she could not remember. She summarized by saying WEEL did not want the department to go away, nor did they want to harm families, but were willing to work on it.

SEN. GRIMES questioned the assumption in the fiscal analysis. He wondered what it meant by 'same method of recovery' in assumption number one. **Amy Pfeifer, Legal Council for CSED, DPPHS,** said it meant the formula used. She further stated that the federal government must approve the state's formula for cost recovery fees.

SEN. GRIMES asked for clarification on the first technical note on page two of the fiscal note. **Ms. Pfeifer** explained that 66% is

funded by the federal government, therefore, 66% of the recovery fees must be paid back to them. That is the essence of cost recovery fees.

SEN. GRIMES brought up earlier testimony of promises of litigation, questioning the \$73,937 in the fiscal notes, third technical note, wondering if it is what will be additionally incurred. **Ms. Pfeiffer** said that was what was paid out for the department's defense and plaintiff's council for the Holden case.

SEN. GRIMES asked if the department considered taking the money out of the obligor rather than the obligee and wondered what the rationale was in taking the fee out of the obligee. **Ms. Pfeiffer** said the issue with the obligor was that under federal distribution law, any money coming in from the parent paying support must first go to current support and then arrears. The fee is at the bottom. Fees cannot be collected until all the other child support is paid; therefore, a fee to the obligor does not provide a revenue source for the division.

SEN. GRIMES asked if the division had to charge a greater percentage to get the same revenue to be able to recoup. **Ms. Pfeiffer** said that would be speculation. There are cases where monies may never be collected. In some cases, the fee is never gotten because the arrears are never paid.

SEN. GRIMES wondered if the fee were not collected, would there be less child support collected because of the reductions that would have to occur in the division. **Ms. Pfeiffer** said if this bill does not pass and there is not an alternative funding source, then there would have to be further cuts in the division. Further cuts in the division means fewer caseworkers to handle the same caseload, which in turn result in decreased performance, which then begins a downward spiral.

SEN. SCHMIDT wanted to know what Ms. Moog's reaction was to Lonnie Olson's earlier statement. **Ms. Moog** said it wasn't only TANF recipients that have to be involved in child support revenue. It is also the working parent that uses state paid daycare.

SEN. CROMLEY wanted to know if the parties, at the time of dissolution, agreed to make payment through child support or was it only through enforcement. **Ms. Pfeiffer** it is an income withholding, it does come through CSED.

SEN. CROMLEY wanted to know if it were still possible, at the time of parenting arrangement, for parents to agree to make payments directly. **Ms. Pfeiffer** said that federal and state law

does provide for income withholding. The exception is when there has been satisfactory payment history or there is another sufficient security of payment that is in the best interest of the child. It does not mean that the CSED still might not be involved in the enforcement.

SEN. CROMLEY expressed concern regarding those who wanted to avoid paying the fee. If they were to arrange to pay directly to the obligee would the department see that as a potential problem.

Ms. Pfeiffer said the fee was for those who apply for the services. They have a choice to use the services or not. The only people who are forced to use the services are TANF recipients and some foster care recipients.

SEN. O'NEIL wanted to know how the department came up with the \$7 charge. **Mr. Olson** said the charge was based on an analysis of the actual cost for a payment, that was undertaken by the University of Montana.

SEN. O'NEIL asked if the department had looked at the prospect of a potential lawsuit. **Mr. Olson** gave what he believed was the opinion of the department and that is the defense has put forth to that lawsuit for meritorious defenses and that the department would prevail. He asserted that Montana does not stand alone as the only state that assesses fees. Arkansas charges \$18 in any month in which a payment was received and distributed. He ended by saying the department has meritorious defenses and that it is a legitimate issue. He said that if the department thought the fee was a violation of federal or state constitutional law, they would never go forward with it.

SEN. O'NEIL asked if Arkansas defended the same issue. **Mr. Olson** said not to his knowledge.

Ms. Lee spoke specifically of the Arkansas issue. She said that a ruling should be forth coming at the end of the month, Walter V. Barclay. She referred to exhibit 4, the 2002 Litigation Survey. The Harp V. Metcalf was the Tennessee lawsuit. She said they would probably go in favor of the plaintiff.

{Tape: 2; Side: A}

Closing by Sponsor: **SEN. COBB** waived his close.

ADJOURNMENT

Adjournment: 5:15 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs05aad)